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Third report on reservations to treaties

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Addendum

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2. The definition of reservations tested in practice, judicial decisions and doctrine

84. This explanation obviously poses the question whether the composite definition given above can nevertheless be considered sufficiently general for the purposes of the guide to practice.

85. It is generally acknowledged that this is not the case, for example, for the definition of treaties themselves, and that in particular, the limitation of treaties to international agreements concluded "in written form" is valid only for the purposes of the Vienna Conventions and does not call in question the inclusion of oral agreements in the general category of treaties.[120] It would seem, however, that the same does not apply in respect of the definition of reservations found in the Conventions. Although the definition is given for the purposes of implementing the Conventions themselves, it is considered sufficiently general to apply outside the Vienna Conventions regime.[121]

86. It does not seem essential, therefore, to maintain, for the purposes of the guide to practice the precautionary wording used by the drafters in entitling article 2 of the 1969, 1978 and 1986 Conventions "Use of terms" rather than, simply, "Definitions", so as to make it clear that this article is "intended only to state the meanings with which terms are used" in the Commission's draft articles in the first instance and subsequently in the definitive Conventions.[122]

87. The fact remains, however, that although the "Vienna definition"[123] may (and should) be considered generally valid in respect of reservations *to treaties*, it is obviously limited to that function. It might be advisable to remember that the technique of reservations is not limited to treaty law: it has become current in the context of adopting resolutions, whether in the form of recommendations or decisions, in some international organizations.[124]

88. Although within these limits the Vienna definition has undoubtedly become firmly established, it nevertheless raises difficult problems, due to what it says and also what it does not say. As one jurist has written, "This matter of a definition [of reservations], while relatively simple in the abstract, can be difficult in practice."[125] Although very widely accepted, this definition is not precise enough to resolve all the doubts that may arise concerning the nature of certain unilateral instruments that sometimes accompany the expression by States (and, much more rarely, by international organizations), of their consent

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[120] See article 3 of the Vienna Conventions of 1969 and 1986.

[121] See, for example, J. M. Ruda, "Reservations to Treaties", *RCAD*, 1975-III, vol. 146, p. 105; John King Gamble, Jr., "Reservations to Multilateral Treaties: A Macroscopic View of State Practice", *AJIL*, 1980, p. 374 and pp. 39-40; or D. W. Greig, "Reservations: Equity as a Balancing Factor?", *Australian YbIL*, 1995, p. 26; Frank Horn, *Reservations and Interpretative Declarations to Multilateral Treaties*, T.M.C. Asser Instituut, Swedish Institute of International Law, Studies in International Law, vol. 5, 1988, p. 40.

[122] See paragraph (1) of the commentary to article 2 in the Commission's report on its eighteenth session, in *Yearbook ... 1996*, vol. II, p. 188; see also the comments of J. M. Ruda and F. Horn (footnote 121).

[123] This expression means the composite text resulting from the "addition" of the 1969, 1978 and 1986 definitions (see para. 82 above).

[124] See Jean-François Flauss, "Les réserves aux resolutions des Nations Unies", *RGDIP*, 1981, pp. 5-37. States not only make "reservations" to resolutions adopted by international organizations; they also interpret them unilaterally by making formal statements for that purpose. See, for example, the concordant statements made by the representatives of the United States, France and the United Kingdom on the occasion of the adoption on 27 May 1993 of Security Council resolution 827 (1993), establishing the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia.

[125] John King Gamble, Jr., op. cit., p. 373; see also, for example, R. St. J. MacDonald, "Reservations under the European Convention on Human Rights", *Belgian Review of International Law*, 1988-2, p. 434.

to be bound. In particular, it fails to eliminate serious difficulties concerning the distinction between reservations and interpretative declarations, which it does not define.[126]

A. Establishment of the Vienna definition

89. Despite some nuances and the expression of some regrets, the definition of reservations that can be deduced from the Vienna Conventions has generally won approval in the writings of jurists. That definition has clearly been accepted in judicial practice, despite the relative rarity of precedents, and seems to constitute a point of reference for States and international organizations in their practice with regard to reservations.

(a) Qualified approval in the writings of jurists

90. A definition of reservations is undoubtedly useful, although its usefulness has sometimes been called in question.[127] Such a definition makes it possible to draw a distinction between "true" reservations, which correspond to the definition given, and instruments which may appear to be reservations but in fact are not. Such a distinction is all the more essential because, first, the terminology used by States is extremely variable (not to say capricious)[128] and second, because relatively precise consequences flow from this distinction: the entire reservations regime established in articles 19-23 of the 1969 and 1986 Conventions and article 20 of the 1978 Convention is affected.

91. It is therefore not surprising that efforts to define reservations were being made in the literature prior to the adoption of the Vienna Convention on the Law of Treaties, and even before the preliminary work began. However, the adoption of the 1969 Convention put an end to the chaotic proliferation of doctrinal definitions, whose purpose thereafter was simply to complete or clarify the Vienna definition without calling it in question.

(i) Summary overview of doctrinal definitions before 1969

92. In the context of this report it is impossible to make an exhaustive survey of the doctrinal definitions which preceded the definition adopted in 1969: hardly any manual on public international law has ventured to undertake this task.[129] We will simply recall here the definitions which are the most important, by reason of either the fame of their author and their influence, or their relative originality. They will be grouped according to their common features and the differences between them and the Vienna definition will be highlighted, so as to reveal any weak points they may have.

93. Mr. Frank Horn, who has made a survey of this kind, draws a distinction between authors who have produced a "descriptive" definition, aimed at reflecting as comprehensively as possible the multiform practice of States, and those who have proposed a "stipulative" definition, aimed at channelling that practice.[130] In fact, this classification overlaps another, more directly operational for the purposes of this report, namely that which

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[126] Because of its importance, this particular problem is dealt with below in a separate paragraph.

[127] See the statement by the representative of Turkey, Mr. Kural, in the Sixth Committee of the General Assembly on 14 October 1950 (*Official Records of the General Assembly, Sixth Committee*, 221st meeting, para. 23).

[128] See section B (iv) and paragraph 3, section A (i), below.

[129] Frank Horn has rightly pointed out that, strangely enough, no effort was made to define reservations during the first attempts to codify their legal regime within the League of Nations and the Pan American Union (*Reservations and Interpretative Declarations to Multilateral Treaties* ..., p. 33).

[130] Frank Horn, op. cit.

distinguishes between on the one hand, the writers who stress the form of reservations and view them primarily as instruments, and, on the other, those who emphasize the effect of reservations.

94. The most "formalistic" definition is probably that of D. H. Miller, author of one of the very first detailed studies on reservations, published in 1919:

> "A reservation to a treaty may be defined as a formal declaration relating to the terms of the treaty made by one of the contracting Powers and communicated to the other contracting Power or Powers at or prior to the delivery of the instrument of ratification of the declarant."[131]

This is a very "neutral" definition, which says nothing about the effects of reservations and therefore cannot be used to distinguish between reservations and interpretative statements.[132]

95. This formalistic definition has nevertheless remained largely isolated[133] and almost all the writers who have concerned themselves with reservations have combined the formal and substantive approaches, thus confirming that reservations can only be defined by combining their form and the effects they produce (or seek to produce), just as is done in the Vienna Conventions.

96. Thus, according to Anzilotti:

> "... the word reservation indicates a declaration of will by which the State, while accepting the treaty as a whole, excludes from its acceptance certain specific provisions by which it nevertheless refuses to be bound".[134]

To a large extent this concise definition prefigures the Vienna definition inasmuch as it contains both a formal element (the reservation is a declaration, unilateral in that it emanates from "the State") and a substantive element (the State making the reservation is not bound by "specific provisions" of the treaty).

97. The same is true of the famous definition adopted at about the same time in the draft Convention on the Law of Treaties of the Harvard Law School, which defines a reservation as follows:

> "A formal declaration by which a State, when signing, ratifying or acceding to a treaty, specifies as a condition of its willingness to become a party to the treaty certain terms which will limit the effect of the treaty in so far as it may apply in the relations of that State with the other State or States which may be parties to the treaty."[135]

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[131] David Hunter Miller, *Reservations to Treaties: The Effect and the Procedure in Regard Thereto*, Washington, D.C., 1919, p. 76.

[132] See Paragraph 3 below.

[133] F. Horn (op. cit., p. 33) places in the same category of definitions that formulated by R. Genet, author of another major work on reservations, published in 1932: "Reservations are declarations made prior to, concomitant with, or posterior to an international diplomatic instrument by one or all the signatory States which limit, to a greater or lesser degree, both qualitatively and quantitatively, but always in a clearly defined way, the accession of that State or States to the convention that has been or is to be concluded" ("Les réserves dans les traités", *Revue de droit international et des sciences diplomatiques et politiques*, 1932, p. 103). This definition, which is very different from the Vienna definition, nevertheless introduces a "substantive" element that is absent from the one proposed by Miller.

[134] Dionisio Anzilotti, *Cours de droit international*, French translation by G. Gidel, Paris, Sirey, 1929, vol. I, p. 399.

[135] Research in International Law of the Harvard Law School, "Draft Convention on the Law of Treaties", *AJIL*, 1935, supplement No. 4, p. 843.

Here again, the definition combines elements of form and of substance (concerning the effect of the reservation), and, like the Vienna definition, adds details concerning the time at which the declaration must be made in order to be termed a reservation.[136]

98. However, although in the period between the two world wars it was established that a reservation is a unilateral declaration[137] and that the time at which a declaration is made is relevant to its purposes, study of the doctrine of that period reveals wide disagreement among writers on the substantive aspect of the definition, that is, the anticipated effects of a declaration.

99. If one leaves aside the distinction between writers who include under one and the same definition both reservations and unilateral declarations and writers who exclude unilateral declarations,[138] the main dispute concerns the issue of the "limiting" or "excluding" effect of reservations as compared with their "modifying" effect: "writers who did mention only the 'excluding' or only the 'limiting' effect of reservations were [apart from Anzilotti or Strupp and the Harvard draft] Baldoni, Hudson, Pomme de Mirimonde, Accioly and Guggenheim. However, there were numerous writers that did admit the possibility of reservations having a 'modifying' effect on treaty norms. Holloway, Hyde, Kraus, Podestá Costa, Rousseau and Scheidtmann, to name just a few, advocated concepts that related to the 'modifying' effect of reservations, with or without referring to their 'excluding' effect".[139]

100. The dispute is by no means insignificant, and to a large extent it is still continuing, even though the Vienna Convention of 1969 deliberately aligns itself with the second doctrinal trend referred to by Frank Horn.[140]

(ii) Contemporary doctrinal positions on the Vienna definition

101. Clearly, when the Commission set about on defining the concept of a reservation, it was not venturing into a doctrinal *terra incognita*; the path was in fact well marked, since a broad consensus had developed by the end of the period between the two wars that the definition should include a formal ("procedural") component and a substantive component, and, despite the dispute referred to above, the content of each of these components was quite narrowly circumscribed. This is perhaps why after 1969 commentaries on the Vienna definition were rather positive on the whole.

102. Prof. Pierre-Henri Imbert, who wrote one of the most incisive monographs on the subject of reservations, does express the following view: "[t]his definition appears very precise and complete. However, it is not entirely satisfactory; [...] some of these terms are too general, whereas others are too restrictive"[141]. In particular, he criticizes the definition for including elements that concern not the definition of reservations but their validity,

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[136] This is also the case, for example, for the definition of Karl Strupp in *Eléments de droit international publiques universel, européen et americain*, Eds. Internationales, Paris, 1930, vol. I, p. 286 – this definition includes a definition of interpretative declarations.

[137] See, however, the curious position taken by Georges Scelle, who defines a reservation as a "*treaty clause* emanating from an initiative of one or several Governments that have signed or acceded to a treaty setting up a legal regime that derogates from the general treaty regime" (*Précis de droit des gens. Principes et systématiques*, Paris, Sirey, vol. II, 1934, p. 472; emphasis added.

[138] See Paragraph 3 below.

[139] Frank Horn, op. cit., p. 34. Horn believes that Scelle, Khadjenouri and Scheidtmann can also be included in the second category. Exact references are provided in notes 7, 8 and 9 (p. 390).

[140] Art. 2, para. 1 (d): "... a unilateral statement [...] whereby it purports to exclude or to modify the legal effect ...", see section B (iii) below.

[141] Pierre-Henri Imbert, *Les réserves aux traités multilatéraux*, Paris, Pédone, 1979, p. 9.

specifying that they concern only "certain provisions" of the treaty in question, whereas, in his view, the purpose of a reservation is necessarily to restrict the obligations flowing from a treaty (viewed as a whole).[142] Oddly enough, he does not level the same criticism at the time aspect of the Vienna definition,[143] which would also appear to be more relevant to a legal regime applicable to reservations than to a definition of reservations; by contrast, he suggests that the definition should be expanded in order to emphasize that "it may be expressly provided that reservations shall be made at a time other than when a State signs a treaty or expresses its consent to be bound by it".[144]

103. On the basis of these criticisms, Prof. Imbert proposes a more complete definition that he believes should make it possible to avoid any ambiguity:

> "A reservation is a unilateral statement, however, phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, or when making a notification of succession to a treaty, *or at any other time stipulated by a treaty*, whereby it purports to *limit or restrict the content or scope of the obligations flowing from the treaty with respect to that State*".[145]

104. Another eminent expert on reservations to treaties, Frank Horn, partly endorsed these criticisms when he expresses the view that the phrase "whereby it purports to exclude [...] the legal effect of certain provisions" "seems to lack the necessary precision".[146 and 147] The definition given by Marjorie Whiteman, who replaces the word "exclude" with the word "limit" appears to be a response to the same concern.[148]

105. It is nonetheless striking that, to the Special Rapporteur's knowledge, none of the writers who have examined the issue of reservations to treaties in particular calls the Vienna definition radically into question, and that they all, without exception, combine one or more formal elements (a declaration made at a given time) and a substantive element that concerns the effect of the declaration, a point on which the disagreements and hesitation are more pronounced.[149]

106. Moreover, and above all, the great majority of contemporary writers adhere to the Vienna definition, which most of them simply reproduce.[150]

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[142] Ibid., pp. 14-15; on this point, see also section B (iii) below.

[143] "... when signing, ratifying, accepting, approving or acceding to a treaty ..." (1969 and 1986 text) "... when making a notification of succession to a treaty ..." (1978 text); see also section B (iii) below.

[144] Pierre-Henri Imbert, op. cit. p.12; see also pp. 163-165.

[145] Ibid., p. 18; the words underlined differ from the wording of the (consolidated) Vienna definition.

[146] F. Horn, op. cit., p. 83.

[147] Prof. W. Paul Gromley also opts for a much broader definition of reservations than the Vienna definition, since he includes "all devices the application of which permit a State to become a party to a multilateral convention without immediately assuming all of the maximum obligations set forth in the text"; however, this bias is attributable to the very purpose of the study in question, which concerns alternatives to reservations ("The Modification of Multilateral Conventions by Means of 'Negotiated Reservations' and other 'Alternatives': A Comparative Study of the ILO and Council of Europe", *Fordham Law Review, 1970-1971*, p. 64); on this point, see section 3 below.

[148] Marjorie M. Whiteman, *Digest of International Law*, vol. 14, 1970, p. 137: "The term 'reservation' [...] means a formal declaration by a State, when signing, ratifying or adhering to a treaty, which modifies or limits the substantive effect of one or more the treaty provisions as between the reserving State and other States Party to the treaty". Also see Renata Szafarz, "Reservations to Multilateral Treaties", *Polish YBIL*, 1970, p. 294.

[149] See in particular section B (iii) below.

[150] See, among many other examples: Suzanne Bastid, *Les traités dans la vie internationale – Conclusion et effets*, Économica, 1985, p. 71; D. W. Bowett, "Reservations to Non-Restricted Multilateral Treaties", *BYBIL* 1976-1977, pp. 67-68; Patrick Daillier and Alain Pellet, *Droit international public (Nguyen Quoc*

107. At the very least it can be said that, as indicated by José-María Ruda, "notwithstanding the intention of the authors of the Convention, the doctrinal importance of article 2, paragraph 1 (d), is undeniable".[151] This is unquestionably a rare doctrinal quasi-consensus, which means that it can be concluded that "[i]t is reasonable to assume that although the Vienna Convention is not yet universally adhered to, it [the Vienna definition] represents the more consensual statement on the subject".[152]

(b) Establishment of the Vienna definition by means of practice and judicial decisions

108. The Vienna definition has also been established implicitly through practice, and very explicitly through judicial decisions, and it is unquestionably an undeniable reference point in the area in question; it may thus be inferred without any great risk of committing an error that, although a process of trial and error may have preceded its adoption, the definition is of a customary nature.

(i) Implicit establishment of the Vienna definition through practice

109. It is hard to demonstrate on the basis of State practice that there is undeniable adherence to the Vienna definition, since States are rarely prompted to make explicit references to it.

110. It will be recalled, however, that despite a number of clashes, particularly concerning the Hungarian amendment, article 2 of the Vienna Convention of 1969 was ultimately adopted without opposition,[153] and the definition laid down in paragraph 1 was not called in question in any way in either 1978 or 1986.[154]

111. It is also interesting to note that the restatement of the law applied by the United States in its foreign relations defines reservations on the basis of article 2, paragraph 1 (d), of the Vienna Convention of 1969, which it simply paraphrases, while omitting the phrase "however phrased or named".[155] The very fact that this compendium, which informally

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Dinh, LGDJ, Paris, 1994, p. 177; E. W. Greig, "Reservations: Equity as a Balancing Factor?", Australian *YbIL*, 1995, p. 26; Adolfo Maresca, *Il diritto dei tratti – La Convenzione codificatrice di Vienna del 23 Maggio 1969*, Giuffré, Milano, 1971, pp. 287-288; Sir Robert Jennings and Sir Arthur Watts, *Oppenheim's International Law*, 9th ed., vol. I, *Peace*, Longman, London, p. 1241; Paul Reuter, *Introduction au droit des traités*, 3rd ed. revised and supplemented by Philippe Cahier, P.U.F., Paris, 1995, p. 71 and pp. 105-108; Sir Ian Sinclair, *The Vienna Convention on the Law of Treaties*, Manchester U.P., 1984, pp. 51-54; Lilly-Sucharipa-Behrmann, "The Legal Effects of Reservations to Multilateral Treaties", *Austrian Review of International and European Law*, 1996, p. 72; Ian Brownlie, *Principles of Public International Law*, Oxford, Clarendon Press, 4th ed., 1990, pp. 608-611; Dominique Carreau, *Droit international*, Paris, Pédone, pp. 119-124; J. Combacau and Serge Sur, *Droit international public*, Paris, Montchrestien, 1995, pp. 134-138; M. Diez de Velasco, *Instituciones de derecho internacional público*, Madrid, Editorial Tecnos, 1988, vol. 1, pp. 119-125; Pierre-Marie Dupuy, *Droit international public*, Paris, Dalloz, 1993, pp. 194-198; E. Jiménez de Aréchaga, *El derecho internacional contemporáneo*, Madrid, Editorial Tecnos, 1980, pp. 50-55; D.P. O'Connell, *International Law*, London, Stevens and Sons, 1970, vol. 1, pp. 229-241; C. Rousseau, *Droit international public*, Paris, 1970, vol. I, pp. 119-126; I. Seidl-Hohenveldern, *Völkerrecht*, Köln, Berlin, Bonn, München, Carl-Heymenns Verlag K6, 1997, pp. 72-75; Malcolm N. Shaw, *International Law*, Cambridge, Cambridge University Press, 4th ed., 1997, pp. 641-649; A. Verdross and B. Simma, *Universelles Völkerrecht, Theorie und Praxis*, Berlin, Dunker und Humblot, 1984, pp. 466-472.

[151] J. M. Ruda, "Reservations to Treaties", *RCADI*, 1975-III, vol. 145, p. 105.

[152] John King Gamble, Jr., op cit., p. 374.

[153] See para. 68 above.

[154] See paras. 72 and 78 above.

[155] The American Law Institute, *Restatement of the Law Third*, Washington, D.C., vol. 1, 14 May 1986, para. 113, p. 180.

represents the views of the United States Government, takes care to emphasize that the United States Senate uses the word in a different sense[156] confirms that, in the view of the United States, the Vienna definition prevails at the international level.

112. Above all, it should be noted that when States "requalify" an interpretative declaration as a reservation[157] they sometimes explicitly invoke article 2 of the Vienna Conventions. For example, the Greek Government, when protesting against Turkey's "interpretative declarations" with respect to the European Convention on Human Rights, expressed the following view: ... any unilateral declaration that limits the contractual obligations of a State is undeniably a reservation at the international level. This is one of the soundest principles of international treaty law, which has been codified by means of the two Vienna Conventions, that of 1969 on the law of treaties and that of 1986 on the law of treaties between States and international organizations or between international organizations. With identical wording, both treaties stipulate that "reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effects of certain provisions of the treaty in their application to that State (art. 2, para. 1 (d)).[158]

113. Even when States do not make an explicit reference to the Vienna definition they are clearly using it as a basis, sometimes paraphrasing parts of it; for example, when expressing opposition to a United States "declaration" with respect to the International Covenant on Civil and Political Rights of 1966, Finland and Sweden recalled that "under international treaty law, the name assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified, does not determine its status as a reservation to the treaty".[159]

114. Moreover, in a number of contentious cases the States parties to the dispute in question have explicitly acknowledged that article 2, paragraph 1 (d), of the Vienna Convention of 1969 "correctly defines a reservation". That was so where France and the United Kingdom were concerned in the *Mer d'Iroise* (Iroise gulf) case.[160] In addition, in the *Belilos* case, which was submitted to the European Court of Human Rights, Switzerland invoked this same provision when it sought to establish that an interpretative declaration that it had itself formulated was in fact in the nature of a reservation.[161]

(ii) Establishment of the Vienna definition by means of judicial decision

115. The relevant judicial decision confirms that the Vienna definition is very widely accepted. Although the International Court of Justice has never taken up the issue of the definition of reservations, the arbitral tribunal set up in the above-mentioned *Mer d'Iroise*

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[156] Ibid., the different meaning in question, which is supposedly to be found in paragraph 314, *Comment b*, is unclear to a reader not familiar with United States practice.

[157] See Paragraph 3 below.

[158] Letter from the Deputy Minister for Foreign Affairs to the Secretary-General of the Council of Europe dated 6 April 1987, reproduced in European Commission of Human Rights, decision of 4 March 1991, *Chrysostomos et al. v. Turkey, RUDH* 1991.

[159] Text of the Finnish objection (*Multilateral treaties deposited with the Secretary-General – Status as at 31 December 1996* United Nations publication, Sales No. E.97.V.5, chap. IV.4, p. 131); The Swedish objection is very similarly worded (ibid., p. 136).

[160] See the arbitral decision of 30 June 1977, *Case concerning the delimitation of the continental shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic, RIAA*, XVIII, para. 55, p. 40.

[161] Judgment of 29 April 1988, Publications of the European Court of Human Rights, Series A, vol. 132, para. 42, p. 21.

case between France and the United Kingdom, and also the organs of the European Convention on Human Rights and the American Convention on Human Rights, have, in the rare instances in which they have been called on to state a position, reached conclusions that could not possibly be clearer in that respect.

116. In the *Mer d'Iroise* case, the United Kingdom claimed that the reservations made by France to article 6 of the Vienna Convention of 1958 on the Continental Shelf were not true reservations in the sense in which that term is understood in international law.[162] In its decision of 30 June 1977, the Arbitral Tribunal noted that the two States agreed that article 2, paragraph 1 (d), of the 1969 Convention correctly defined a reservation[163] and, without directly stating a position on that point itself, it accordingly concluded that the contested reservation was indeed a reservation.[164]

117. The European Commission of Human Rights, in the *Temeltasch v. Switzerland* case, relied on the definition set out in article 2, paragraph 1 (d), of the Convention when requalifying a Swiss interpretative declaration concerning the European Convention on Human Rights.[165]

118. The American Court of Human Rights, without explicitly referring to article 2, paragraph 1 (d), of the Vienna Convention on the Law of Treaties (to which article 75 of the American Convention on Human Rights expressly refers with respect to the reservations regime) did, however, explicitly reflect some elements of the definition set out in the Vienna Convention, particularly where it recalls that "[r]eservations have the effect of excluding or modifying the provisions of a treaty".[166]

119. This very striking consistency of practice, judicial decision[167] and doctrine leave little doubt that the Vienna definition is now customary in nature, as expressly acknowledged by the European Commission of Human Rights in the *Temeltasch* case:

> Since article 64 does not contain any definition of the expression "reservation", the Commission must analyse this concept, and also the concept of an "interpretative declaration", within their meaning under international law. In that connection, it will attach particular importance to the Vienna Convention on the Law of Treaties of 23 May 1969, which above all lays down rules existing under customary law and is essentially of a codifying nature.[168]

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[162] Decision of 30 June 1977, *Case concerning the delimitation of the continental shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic*, *RIAA XVIII*, para. 55, p. 40, p. 11; also see para. 54, pp. 39-40.

[163] See para. 115 above.

[164] Decision of 30 June 1977, *Case concerning the delimitation of the continental shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic*, *RIAA XVIII*, para. 55, p. 40.

[165] Decision of 5 May 1982, European Commission of Human Rights, *Decisions and Reports*, April 1983, para. 69 (where article 2, para. 2 (d), is quoted in full) to para. 282. The Commission did not take such a position in the *Chrysostomos* case (see footnote 158 above).

[166] Consultative opinion OC-3/83 of 8 September 1983, concerning the death penalty (art. 4, para. 2, and art. 4, para. 4) in the American Convention on Human Rights, para. 62; also see para. 73.

[167] The States concerned by the above-mentioned decisions of the Franco-British Arbitral Tribunal and the European Commission of Human Rights were not bound by the Convention on the Law of Treaties.

[168] Decision of 5 May 1982, para. 68; see footnote 165 above.

120. Moreover, this is the conclusion reached, whether implicitly[169] or explicitly,[170] by virtually all of the relevant doctrine. In any event, this confirms that there is no reason to reconsider the definition adopted in 1969 and confirmed and supplemented in 1978 and 1986. However, the mere fact that the Vienna definition is widely accepted as constituting law does not mean that its interpretation and application do not pose any problems, which prompts the question whether it would be appropriate to expand on a number of points in the guide to practice.

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[169] See footnotes 150-152 above.

[170] See, for example, Richard W. Edwards, Jr., "Reservations to Treaties", *Michigan Journal of International Law*, 1989, pp. 369 and 372; or D. W. Greig, "Reservations: Equity as a Balancing Factor?" *Australian YbIL*, 1995, p. 26.